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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

Office Supreme Court U. S.
FILED
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JAMES H. McKENNEY,
Clerk.

FREDERICK W. LINCOLN AND OTHERS,
Plaintiffs in Error,
against
THE UNITED STATES,
Defendant in Error.

No. 149.

WARNER, BARNES & CO., LIMITED,
Appellant,
against
THE UNITED STATES,
Appellee.

No. 466.

Further Memorandum for Plaintiffs in Error and Appellant with Reference to the Text of the Order of October 26, 1898.

JOHN G. CARLISLE,
PAUL FULLER,
FREDERIC R. COUDERT,
HENRY M. WARD,
For Plaintiffs in Error and Appellant.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

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WARNER, BARNES & CO., LIMITED, Appellant, AGAINST THE UNITED STATES, Appellee.	No. 466.

Further memorandum for plaintiffs in error and appellant with reference to the text of the order of October 26, 1898.

The Attorney-General having filed the order of the Military Governor of the Philippines of October 26, 1898, which embodies the full text of the customs tariff and regulations annexed to the President's order of July 12, 1898, and one of the Justices having intimated upon the re-argument that the full text of the tariff and regulations was not before the Court when the opinion in this case was written, we think it proper to bring two points to the attention of the Court.

First. This order of October 26, 1898, was made nearly six months before the ratification of the treaty of peace, and consequently at a time when the United States and the Philippines were mutually foreign to each other. It is in all essential respects a repetition of the order of July 12. Consequently, the provisions in this order to which attention was called upon the reargument that the manifests of vessels from ports in the United States should be certified by the Collector of the port of sailing (par. 2, p. 1). That the duty, etc., should be collected in uniform manner regardless of the country of the origin of the merchandise (par. 315, p. 29) and the further provisions mentioned in the Government's briefs herein that merchandise imported for the use of the Government should be exempt from wharf charges (p. 18), that all supplies for the use of the Army and Navy should be admitted without payment of duty (p. 22), and the general provision in the last paragraph that the foregoing schedules should remain in force until duly modified, suspended or revoked (Par. 372, page 40), *all related at the time they were made to imports from foreign countries and from foreign countries only*, for at that time under the decisions in the *First Dooley case* and the *Diamond Rings case*, the United States was foreign to the Philippines and remained so until the ratification of the Treaty on April 11th, 1899, and no suggestion has been made but that Spain was also foreign to the Philippines during the same period. Therefore, importations from a country not foreign, *i. e.*, domestic to the Philippines, *were not within the scope of the language of any of these sections.* They all, when made, were intended to apply to foreign countries only and this meaning was never changed by any express order or amendment making them specifically applicable to importations from the United States when the United States had become domestic, *i. e.*, after April 11th, 1899.

Second. The Porto Rican order of January 10th, 1899, which was construed by this Court in the first Dooley case, contained provisions similar to those in the Philippine order just referred to and expressly provided in so many words that

"*importations from the United States are dutiable like other commodities.*"

The Porto Rican order was promulgated January 20, 1899, to take effect February 1st, 1899, *i. e.*, after the Treaty had been signed and when it had been sent to the United States Senate for ratification, an important point to bear in mind in construing the Porto Rican order, for plainly the duties authorized by that order were not as they were in the Philippine order, levied as a military contribution, but were taxes levied by the *de facto* Civil Government for its support; and, at the time that the Porto Rican order was made, Porto Rico had been evacuated by the Spaniards; the United States was in full possession; the treaty had been signed and was on the point of being ratified. Therefore, the Porto Rican order *was apparently intended to apply to imports from the United States, not only during the short period of weeks which might intervene before the exchange of ratifications, but after the exchange* and until Congress should legislate on the subject.

The Porto Rican order contained in Section 2 a provision that navigation between the United States and Porto Rico should be confined to American vessels. Section 4 contained a provision substantially identical with that in the Philippine order, that the manifest of vessels from ports in the United States should be certified by the Collector of the port of sailing. By Section 27 it was provided that all supplies and materials for the use of the Army and Navy should be admitted without payment of duty, and finally, immediately preceding the schedules of the import rates of duties, is the provision that "importations from the United States are "dutiable like other commodities."

There is no section of the Porto Rican order providing that importations shall be subject to uniform duties regardless of the country of origin; but it is clear that the provision to that effect in the Philippine order, made six months before the ratification of the treaty, was when made intended to apply to imports from foreign countries only; but the provision in the Porto Rican order, *that importations from the United States should be dutiable like other commodities* plainly speaks for itself; yet this Court by the decision in the First Dooley case has held (without directly passing upon the point) that this particular provision of the

Porto Rican order remained in force only from February 1st to April 11th, 1899, and that thereafter the entire order ceased to apply to importations from the United States.

In conclusion we submit that an examination of the text of the Philippine order and a comparison of the provisions of that order with the similar provisions of the Porto Rican order, serve to strengthen the position which we have maintained throughout this case, that the Philippine order was intended to apply to importations into the Philippines from foreign countries only and, therefore, did not apply to imports from the United States after April 11th, 1899.

February 1st, 1906.

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